

## REQUEST FOR COUNCIL ACTION

MEETING

DATE: 8-18-03

259-

AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING	ITEM NO. <b>E-10</b>
ITEM DESCRIPTION: Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of townhomes. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.		PREPARED BY: Brent Svenby, Planner

August 11, 2003

**City Planning and Zoning Commission Recommendation:**

On July 23, 2003 the City Planning and Zoning Commission reviewed this request to allow for filling within a Flood Prone district. The Commission also reviewed a zone change and GDP for the property.

Mr. Burke moved to recommend approval of Type III, Phase III Conditional Use Permit #03-42 by Americana Realty with the staff-recommended conditions. Mr. Quinn seconded the motion. The motion carried 7-0.

**Planning Staff Recommendation:**

See attached staff report dated July 14, 2003.

<b><u>Council Action Needed:</u></b>
1. If the Council wishes to proceed, it should instruct the City Attorney to prepare a resolution either approving, approving with conditions, or denying this request based on the criteria of Paragraphs 61.146, 62.824 and 62.860.

**Attachments:**

1. Staff Report dated July 14, 2003
2. Minutes of the July 23, 2003 CPZC Meeting

**Distribution:**

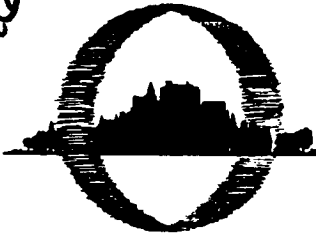
1. City Administrator
2. City Attorney
3. Planning Department File
4. Applicant: This item will be considered some time after 7:00 p.m. on Monday, August 18, 2003 in the Council / Board Chambers in the Government Center at 151 4th Street SE.
5. McGhie & Betts, Inc.

**COUNCIL ACTION:** Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_ to: \_\_\_\_\_

ZC #03-14 CUP #03-43 GDP #213  
Americana Realty  
500' Notification Distance  
Ward 1 Hanson  
06/26/03



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## ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF

*Olmsted*

[www.olmstedcounty.com/planning](http://www.olmstedcounty.com/planning)



**TO: City Planning & Zoning Commission**

**FROM: John Harford, Senior Planner**

**DATE: July 14, 2003**

**RE: Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of townhouses. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.**

### Planning Department Review:

**Applicant:** Americana Realty  
1530 Greenview Lane, SW  
Rochester, MN 55902

**Consultant:** McGhie and Betts, Inc.  
1648 3rd Avenue SE  
Rochester, MN 55904

**Requested Action:** The applicant is requesting a Type III, Phase III conditional use permit to allow for the placement of fill in the flood prone area. The proposal will allow for the development of 8 townhouse units on the easterly portion of the property.

**Location of Property:** The property is located west of Bamber Valley Road, east and south of the Zumbro River, and north of Bamber Corner Subdivision.

**Zoning:** The property is zoned R-1 (Mixed Single Family) District and along with this CUP the property owner has petitioned to rezone the property to the R-2 (Low Density Residential) District.

**Referral Comments:** Public Works  
RPU Water Division  
RPU Distribution Design  
MNDOT  
Planning Department - Wetlands

### Analysis:

BUILDING CODE 507/285-8345 • GIS/ADDRESSING/MAPPING 507/285-8232 • HOUSING/HRA 507/285-8224

PLANNING/ZONING 507/285-8232 • WELL/SEPTIC 507/285-8345

FAX 507/287-2275

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



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The applicant is proposing to place fill within the flood prone area to allow for the construction of 8 townhouses on the eastern portion of the property. Fill is needed to elevate the dwellings, area immediately adjacent to the dwellings, and the private street to the flood protection elevation.

There exists on the property a pond formed as part of a mining operation in 1990 and 1991. The applicant is proposing to excavate additional land in the flood prone district to accommodate the loss of flood storage due to the filling proposed to construct the dwellings and surrounding land. The applicant states that "a balance of the cutting and filling at the site is proposed". The applicant has not provided any further detailed information on the amount of filling and excavation required for the development.

The applicant will be required to fill to the flood protection elevation for this area which is calculated to be 1017.9' MSL at this time. The area 15' from the dwellings will need to be the same elevation. The private drive will need to provide access that is not more than two feet below the flood protection elevation (Sec 62.841(1)).

Hydric soils are present on the property indicating the potential presence of wetland on the property. The applicant is responsible for obtaining the necessary permits for any work on the property that deals with the wetlands. No permits will be issued until the applicant has completed and submitted the necessary information to the LGU and approval is granted.

When deciding on a Conditional Use Permit in any flood district, the standards of Sections 61.146 and 62.824 shall be considered. These sections are attached to the staff report. In addition to Sections 61.146 and 62.824, Section 62.860 needs to be complied with. The applicant will be required to elevate the dwellings and surrounding lands and the roadway access to the minimum levels required by the ordinance as specified above. As a result the factors of Section 62.824 will have been considered or the development will be required as a part of the Site Development Review and permitting process to be in compliance with the provisions of this ordinance.

Section 62.860 of the LDM states that "the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered engineer or hydrologist that the following conditions have been met:

1. Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
2. No net loss of capacity for surface storage of flood waters shall result from the activity.
3. The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.

**Planning Commission Action Needed:**

Conditional use permits of this sort require Council approval. The Planning Commission should make a recommendation to approve, approve with conditions, or deny this request to be forwarded to the Council. The Council will hold a public hearing at a later date.

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**Staff Recommendation:**

The applicant submitted a letter from a professional engineer that states that the plans dated June 23, 2003 (cover letter date) that balance the amount of fill within the Flood Prone District with the amount of material removed from the Floodway District and the Flood Prone District.

It does not appear as though the proposed fill activity would result in a loss of storage of flood waters due to the mining of material on the property. The applicant is proposing to excavate an as yet unknown quantity of material within the Flood Prone and Floodway Districts to accommodate for the loss of. In addition, the applicant will be required to obtain approval and permits from the City for grading and drainage, which will also address erosion control.

Staff does not have a recommendation at this time for the activity within the Flood Prone District as proposed on the plans dated received June 23, 2003 because the applicant has yet to submit the necessary information as required of Section 62.860. The applicant shall be required to submit the necessary information prior to the hearing at the City Council.

In order to ensure compliance with Sections 61.146, 62.824 and 62.860, staff recommends the following conditions:

1. ~~Prior to scheduling the public hearing for the City Council the applicant must submit the information required by Section 62.860.~~
2. ***The applicant shall receive approval of the grading and drainage plan prior to any grading activity taking place on the property. The fill needed shall be that necessary to meet the requirements of Section 62.841.***
3. ***Prior to development of the property, the site plan shall be reviewed through the Site Development Plan Review process. During this review the proposed site plan will be examined to ensure that it meets the standards of the R-2 zoning district.***

**Attachments:**

1. Referral comments
2. Location Map
3. Site Plan
4. Referral Comments
5. Letter from McGhie and Betts

**Note:**

- More detailed comments will be provided during the Site Development Plan Review process

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61.145 **Matters Under Consideration:** The review of a conditional use is necessary to insure that it will not be of detriment to and is designed to be compatible with land uses and the area surrounding its location; and that it is consistent with the objectives and purposes of this ordinance and the comprehensive plan.

61.146 **Standards for Conditional Uses:** The zoning administrator, Commission, or Council shall approve a development permit authorizing a conditional use unless one or more of the following findings with respect to the proposed development is made:

- 1) provisions for vehicular loading, unloading, parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways will create hazards to safety, or will impose a significant burden upon public facilities.
- 2) The intensity, location, operation, or height of proposed buildings and structures will be detrimental to other private development in the neighborhood or will impose undue burdens on the sewers, sanitary and storm drains, water or similar public facilities.
- 3) The provision for on-site bufferyards and landscaping does not provide adequate protection to neighboring properties from detrimental features of the development.
- 4) The site plan fails to provide for the soil erosion and drainage problems that may be created by the development.
- 5) The provisions for exterior lighting create undue hazards to motorists traveling on adjacent public streets or are inadequate for the safety of occupants or users of the site or such provisions damage the value and diminish the usability of adjacent properties.
- 6) The proposed development will create undue fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles.
- 7) In cases where a Phase I plan has been approved, there is a substantial change in the Phase II site plan from the approved Phase I site plan, such that the revised plans will not meet the standards provided by this paragraph.
- 8) The proposed conditional use does not comply with all the standards applying to permitted uses within the underlying zoning district, or with standards specifically applicable to the type of conditional use under consideration, or with specific ordinance standards dealing with matters such as signs which are part of the proposed development, and a variance to allow such deviation has not been secured by the applicant.

62.824 **Conditional Use Permits - Standards for Approval:** When deciding on Conditional Use Permits in any of the flood districts, the following factors, in addition to the standards of Paragraph 61.146 shall also be considered:

- 1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- 2) The danger that materials may be swept onto other lands or downstream to the injury of others.
- 3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary condition.

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- 4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- 5) The importance of the services provided by the proposed facility to the community.
- 6) The need for a waterfront location for the facility.
- 7) The availability of alternative locations not subject to flooding for the proposed use.
- 8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- 9) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- 10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- 11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- 12) Such other factors which are relevant to the purposes of Paragraph 62.800.

**62.860 CONSTRUCTION STANDARDS IN THE FLOOD PRONE DISTRICT**

The requirements applicable in the Flood Fringe District, as defined in Section 62.840 shall apply in the Flood Prone District and, in addition, the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered professional engineer or hydrologist that the following conditions have been met:

- 1) Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
- 2) No net loss of capacity for surface storage of flood waters shall result from the activity.
- 3) The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.



# ROCHESTER

— Minnesota —

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TO: Consolidated Planning Department  
2122 Campus Drive SE  
Rochester, MN 55904

DEPARTMENT OF PUBLIC  
WORKS  
201 4<sup>th</sup> Street SE Room 108  
Rochester, MN 55904-3740  
507-287-7800  
FAX – 507-281-6216

FROM: Mark E. Baker

DATE: 7/8/03

Public Works has reviewed the requested Conditional Use Permit #03-42 by Americana Realty for the placement of fill in a flood prone district. The following are Public Works comments on this request:

1. Grading & Drainage Plan approval is required prior to commencement of grading activities for this project.



Minnesota Department of Transportation

Minnesota Department of Transportation - District 6

Mail Stop 060  
2900 48<sup>th</sup> Street N.W.  
Rochester, MN 55901-5848

Office Tel: 507-280-2913

Fax: 507-285-7355

E-mail: dale.maul@dot.state.mn.us

July 3, 2003

Jennifer Garness  
Rochester Olmsted Planning Department  
2122 Campus Drive SE - Suite 100  
Rochester, MN 55904

**Re: General Development Plan #213 by Americana Realty to be known as Americana Reality. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.**

**Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.**

**Zoning District Amendment #03-14 by Americana Realty. The applicant is proposing to zone approximately 9.5 acres of land from the R-1 District to the R-2 zoning district. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.**

Dear Ms. Garness:

Thank you for the opportunity to review the above proposals by Americana Realty. These proposals will have no significant impacts on Mn/DOT roadways and are acceptable with Mn/DOT. Questions may be directed to Fred Sandal, Principal Planner, at (507) 285-7369 or Debbie Persoon-Bement, Plan and Plat Coordinator, at (507) 281-7777.

Sincerely,

A handwritten signature in cursive script that reads 'Dale E. Maul'.

Dale E. Maul  
Planning Director



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July 2, 2003

Rochester-Olmsted  
CONSOLIDATED PLANNING DEPARTMENT  
2122 Campus Drive SE  
Rochester, MN 55904-7996

REFERENCE: Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area on property located along the west side of Bamber Valley Rd SW and north of Mayowood Ln SW.

Dear Ms. Garness:

Our review of the referenced application is complete and we have no comments.

Please contact us at 507-280-1600 if you have questions.

Very truly yours,

Donn Richardson  
Water

C: Doug Rovang, RPU  
Mike Engle, RPU  
Mark Baker, City Public Works  
Vance Swisher, Fire Prevention

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*we pledge, we deliver*

DATE: July 2, 2003

TO: Jennifer Garness, Planning Dept.  
Rochester-Olmsted Planning Dept.

FROM: Michael J. Engle, Supv. of Distribution Design  
Rochester Public Utilities  
280-1579

SUBJECT: Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of townhomes. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.

RPU's Operations Division review of the above-referenced conditional use permit is complete and our comments follow:

1. There is to be no fill placed in the electric transmission easement along the north property line.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Engle', with a stylized flourish at the end.

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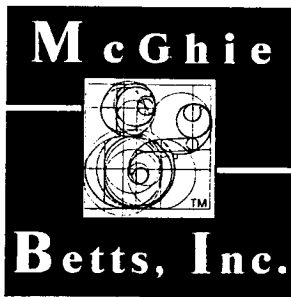
c. Americana Realty  
McGhie & Betts, Inc.

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## WETLAND COMMENTS FOR DEVELOPMENT APPLICATIONS

Application Number: Zoning District Amendment #03-14, GDP #213, CUP #03-42 - Americana Realty

- ☐ No hydric soils exist on the site based on the Soil Survey
- ☒ Hydric soils exist on the site according to the Soil Survey. The property owner is responsible for identifying wetlands on the property and submitting the information as part of this application.
- ☐ A wetland delineation has been carried out for the property and is on file with the Planning Department.
- ☐ A wetland delineation is on file with the Planning Department and a No-Loss, Exemption, or Replacement Plan has been submitted to the Planning Department.
- ☐ A wetland related application has been approved by the City. This plan incorporates the approved wetland plan.
- ☐ No hydric soils exist on the property based on the Soil Survey. However, due to the location in the landscape, the property owner should examine the site for wetlands. The property owner is responsible for identifying wetlands.
- ☐ Other or Explanation:



Rochester  
Minnesota

Land Surveying

Urban - Land Planning

Consulting - Civil Engineering

Geotechnical Engineering

Construction Material Testing

Landscape Architecture

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June 23, 2003

City of Rochester  
Department of Public Works  
201 4<sup>th</sup> Street SE  
Rochester MN 55904

RE: Conditional Use Permit  
Arnold Bomgaar Property  
Bamber Valley Road

Gentlemen:

We are requesting approval of a General Development Plan for the referenced property owned by Mr. Bomgaars. This property is located west of Bamber Valley Road and south of the Zumbro River. This parcel is currently void of any buildings and was partially graded several years ago during earlier development work.

The proposed development includes placing four (4) duplex townhome buildings on the site. Elevations taken at this property indicated floor levels for the buildings will generally be at or within 2' of existing grade. Attached is a preliminary grading plan we have prepared for the site showing the planned building elevations and final site topography.

A balance of the cutting and filling at the site is proposed. The filling needed to raise the building areas is minimal since the current site is at or within about 2' of flood protection level. Cutting (excavation) will be completed along the shore of the existing pond behind the building areas to provide a beach area and to flatten the slope. This will be the source of fill material.

Our work indicates the cutting and filling will balance. This will result in no change in the flood storage capacity for this property and will not impact flood elevations. Building pads will be elevated to the flood protection level as required by the current zoning ordinances.

Very truly yours,

McGHIE & BETTS INC.

  
David L. Morrill, PE

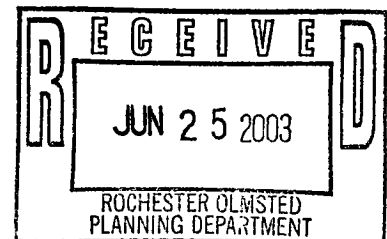
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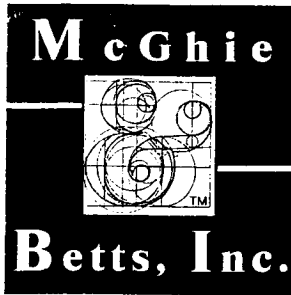
1648 Third Avenue S.E.  
Rochester, MN 55904

Tel. 507.289.3919  
Fax. 507.289.7333

e-mail. mbi@mcghiebetts.com

Established 1946





Rochester  
Minnesota

Land Surveying

Urban - Land Planning

Consulting - Civil Engineering

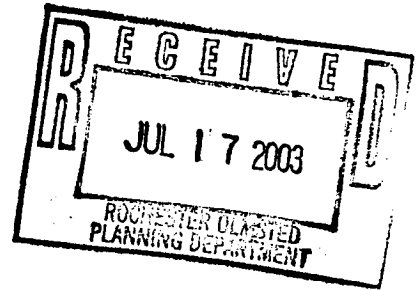
Geotechnical Engineering

Construction Material Testing

Landscape Architecture

July 16, 2003

Olmsted County Planning  
Attn: John Harford  
2122 SE Campus Drive  
Rochester, MN 55904



Re: GDP #413  
Earthwork Summary  
Arnold Bomgaars

CUP#03-42

Dear John :

You have requested additional information regarding the earthwork performed on property owned by Mr. Arnold Bomgaars. The parcel is being proposed for development for residential housing and a General Development Plan was submitted and is under review.

Work at this site dates back to about 1990. At that time, the site was partially graded, including excavation of a pond and placing fill on a part of the eastern edge of the property. We understand you are interested in a summary of the earthwork quantities above the pond water level (1004') and below the hundred (100) year flood elevation (1018').

To prepare this estimate, we have assumed that the site was at about elevation 1012' at the time development began. This is based on historical topographic maps we were able to find. In addition, we have used an average 100 year flood elevation of 1018'. This is approximately the average of the current flood maps.

A summary of the earthwork applications is provided below:

Earthwork Summary		
Cut and Fill Between Elevations 1004' and 1018'		
For GDP #413		
	Cut (cy)	Fill (cy)
Initial Grading ± 1990	37,061	11,081
Proposed Final Grading	2,482	3,689
Total	39,543	14,770
Note: Earthwork Based on Following:		
1) Flood Elevation 1018'		
2) Existing site at about 1012' prior to grading		

1648 Third Avenue S.E.  
Rochester, MN 55904

Tel. 507.289.3919  
Fax. 507.289.7333

e-mail. mbi@mcghiebetts.com

Established 1946



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This indicates more was removed from the site, thus a net increase in flood storage. If you have any questions or if we can provide additional information, please contact us.

Yours very truly,

McGHIE & BETTS, INC.

A handwritten signature in black ink, appearing to read 'D. Morrill', written over the company name.

David L. Morrill, M.S., P.E.

DLM/asj

Cc: File



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MINUTES OF THE  
CITY OF ROCHESTER PLANNING COMMISSION  
2122 CAMPUS DRIVE SE – SUITE 100  
ROCHESTER MN 55904

Minutes of the regularly scheduled meeting of the City Planning and Zoning Commission held on Wednesday, July 23, 2003, at 7:00 p.m. in the Council/Board Chambers of the Government Center, 151 4th Street SE, Rochester, MN.

**Members Present:** Ms. Lisa Wiesner, Chair; Mr. Michael Quinn, Vice Chair; Ms. Mary Petersson; Mr. Ivahn Dockter; Mr. Randy Staver; Mr. Robert Haeussinger; and Mr. James Burke

**Members Absent:** Mr. Paul Ohly and Ms. Leslie Rivas

**Staff Present:** Mr. Brent Svenby and Ms. Jennifer Garness

**Other City Staff Present:** None

**ADMINISTRATIVE BUSINESS:**

Mr. Petersson made a motion to approve the minutes of July 9, 2003, as written. Mr. Staver seconded the motion. The minutes from July 9, 2003 were approved unanimously.

Mr. Staver made a motion to approve the agenda, as written. Ms. Petersson seconded the motion. The motion carried unanimously.

**CONTINUED ITEMS:**

Type III, Phase II Conditional Use Permit #03-12 by Southern Woods Development LLC to allow for the placement of fill in the flood prone district. The proposal is to grade and place fill within the flood prone district. The applicant is also requesting approval of a Substantial Land Alteration to permit site grading that will modify grades by more than 10 feet on portions of the property. The property is located south of 48th Street SW, west of TH 63 and east of 11th Avenue SW.

Mr. Svenby explained that individuals would be renotified once the application is brought forward to the Commission. Also, it would be republished.

Mr. Staver moved to table Type III, Phase II Conditional Use Permit #03-12 by Southern Woods Development LLC to a date uncertain. Ms. Petersson seconded the motion. The motion carried 7-0.

**TYPE III, PHASE III CONDITIONAL USE PERMIT:**

Type III, Phase III Conditional Use Permit #03-42 by Americana Realty to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of townhomes. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River.

X

Mr. Brent Svenby presented the staff report, dated July 14, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Svenby stated that the information requested from the applicant at the time the staff report was written has been provided.

Mr. Svenby stated that, since additional information has been provided, staff-recommended condition number 1 listed in the staff report is no longer needed and could be stricken.

Ms. Petersson asked where the water would be taken.

Mr. Svenby responded in a detention facility located to the west.

**Mr. Burke moved to recommend approval of Type III, Phase III Conditional Use Permit #03-42 by Americana Realty with staff-recommended findings and two conditions as revised by staff. Mr. Quinn seconded the motion. The motion carried 7-0.**

**CONDITIONS:**

1. The applicant shall receive approval of the grading and drainage plan prior to any grading activity taking place on the property. The fill needed shall be that necessary to meet the requirements of Section 62.841.
2. Prior to development of the property, the site plan shall be reviewed through the Site Development Plan Review process. During this review the proposed site plan will be examined to ensure that it meets the standards of the R-2 zoning district.

**PUBLIC HEARINGS:**

Zoning District Amendment #03-14 by Americana Realty. The applicant is proposing to zone approximately 9.5 acres of land from the R-1 (Mixed Single Family) district to the R-2 (Low Density Residential) zoning district. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River. A General Development Plan is being considered concurrent with this application.

**AND**

General Development Plan #213 by Americana Realty to be known as Americana Realty. The applicant is proposing to develop approximately 9.5 acres of land with single family attached dwellings. The property is located along the west side of Bamber Valley Road SW, north of Mayowood Lane SW and south of the Zumbro River. A Zoning District Amendment is being considered concurrent with this application.

Mr. Brent Svenby presented the staff reports to the Commission. The staff reports are on file at the Rochester-Olmsted Planning Department.

Mr. Svenby asked that the additional condition listed in the July 23, 2003 memo regarding a turnaround be added to the staff-recommended conditions.

Mr. Quinn asked where the cross property easement agreement would need to be located.

Mr. Svenby showed the location on a site plan on the overhead projector.